

Legal Notice

Town of Freetown, MA
Request for Proposals (RFP)
Owner's Project Manager (OPM) Services for the
Construction of the New Freetown Police Station

In accordance with Massachusetts General Laws, Chapter 149, Sec. 44A½, the Town of Freetown, by and through its Board of Selectmen and Building Committee, is requesting proposals for the services of an Owner's Project Manager (OPM) to represent the Town's interests in managing the development and construction of the new Freetown Police Station, to be located off Memorial Drive in Freetown, MA. The estimated cost is \$ 7,000,000. Proposers must have, or be firms employing a person with, a current license and registration by the Commonwealth of Massachusetts as an architect or professional engineer, with a minimum of five years experience in the construction and supervision of construction of buildings, or if not licensed as described, then seven years experience in the construction and supervision of construction of buildings. The fee will be negotiated with the selected OPM. The RFP will be available after 8am on Thursday, November 10, 2016 in the Office of the Board of Selectmen, Town Hall, 3 North Main Street, Assonet, MA 02702. Proposals, sealed and clearly marked "Freetown Police Station Construction Project, Response to RFP for OPM Services," are due **no later than 2pm on December 07, 2016** in the Board of Selectmen's Office, 3 North Main Street, Assonet, MA 02702. The contact person is John F. Healey, Town Administrator, 508-644-2201 or townadministrator@freetownma.gov. The Freetown Board of Selectmen is the awarding authority. The Town reserves the right to reject any or all proposals and to only award a contract if it is in the best interest of the Town to do so.

**Town of Freetown
Request for Proposals (RFP) for
OWNER'S PROJECT MANAGER (OPM) SERVICES
For the Construction of the New Freetown Police Station**

Project: Freetown Police Station
Location: Memorial Drive, East Freetown
Estimated Construction Cost: \$7,000,000

1. NOTICE OF REQUEST FOR PROPOSALS

In accordance with Chapter 149, Section 44A½ of the Massachusetts General Laws, it is the Town's intention to retain the services of an Owner's Project Manager (OPM) to represent the Town of Freetown's interests in managing the process of pre-construction through construction close-out of the new Freetown Police Station, to be constructed off Memorial Drive in Freetown, MA. At this time the Town will contract with the selected OPM firm/individual through the project design phase, and the Town may, subject to approval of the project at Town Meeting, and in the Town's sole discretion, amend the contract to include continued OPM services through construction and project close-out phases.

2. TOWN AND PROJECT INFORMATION

Town Background

The Town of Freetown is a community of 9,200 residents bordering the Towns of Lakeville, Rochester, Berkley, Dartmouth, Somerset and the cities of Fall River and New Bedford. Freetown's form of government is open Town Meeting / Three-member Board of Selectmen and a Town Administrator.

Police Station Project

The Freetown Police Department has a current roster of 19 full-time police officers, 5 reserve police officers, 4 full-time dispatchers and 7 part-time dispatchers. The Department's fleet of vehicles includes 9 patrol cars and 3 unmarked cars.

At the Special Town Meeting of October 18, 2016, the voters approved funding for the design of this project. It is anticipated that this project will be brought to the Annual Town Meeting in June, 2017 for approval, subject to approval of a Proposition 2½ debt exclusion ballot question. The debt exclusion election will be held sometime in the Summer of 2017.

3. QUALIFICATIONS FOR THE OWNER'S PROJECT MANAGER

Minimum Requirements

Any firms or individuals interested in serving as the OPM must meet the minimum qualifications listed below. Respondents that do not meet or exceed these requirements will be deemed "not responsive" and will not be considered.

- Current license and registration by the Commonwealth of Massachusetts as an architect or professional engineer, with a minimum of five (5) years experience in the construction and supervision of construction of buildings.

- If not licensed as an architect or engineer by the Commonwealth of Massachusetts, then seven (7) years experience in the construction and supervision of construction of buildings.
- Management of a minimum of five building projects of similar scope as the Freetown Police Station project (in the range of \$6M to \$10M total cost), and at least three Chapter 149 public building projects.
- Thorough knowledge of the Commonwealth of Massachusetts procurement laws, including public building construction with filed sub-bids under Chapter 149 of the General Laws.
- Thorough knowledge of the Massachusetts State Building Code and related codes, the American with Disabilities Act, and applicable construction related codes and regulations.

4. SCOPE OF SERVICES

The selected OPM will be directly responsible to the Town and will be charged to act in the Town's best interest at every stage of the project. The OPM will be required to manage the Police Station project and any related project work, and work in conjunction and cooperation with the project architect, as required by the needs of the project. At all times the OPM must operate at the highest level of professional and ethical standards.

The project services listed below will be the responsibility of the OPM selected by the Town for the project. However, this does not constitute an exhaustive list of every function the OPM will be expected to perform during the course of the project.

Pre-Construction Phase

- Assist the Town in advertising, review of qualifications, selection and oversight of an architect.
- Monitor the overall project budget, and work with the Town to control costs; make recommendations to the Town concerning potential increases or decreases to the budget, including evaluation of design and construction alternatives.
- Provide constructability and coordination review during the preparation of final construction drawings and specifications.
- Review the plans and specifications to ensure that the work is clearly described and undertaken in accordance with the requirements of Chapter 149, sections 44A-44M.
- In consultation with the designer, participate in the bidding process to ensure compliance with bidding requirements and encourage bidder participation.
- Develop and implement a quality control program to be followed during construction.
- Coordinate bidding activities, including development of a contractor bid list, review of subcontractor and contractor bids and recommendation for final contractor selection. Work with the architect to manage the sub-bid and bid solicitation and review process

Construction Phase

- Ensure that all required permits are secured.
- Monitor progress of construction on a daily basis, including attendance at all construction Project Meetings.
- Provide the services of a Clerk-of-the-Works during the active construction phase.
- Provide oversight and coordination, as necessary, of the construction submittal process to ensure compliance with project requirements.
- Provide oversight of the Request for Information (RFI) process and take action to resolve issues when possible.
- Review change order requests in conjunction with the architect and make recommendations to the Town regarding the validity and necessity of proposed changes. Ensure that the architect is maintaining appropriate tracking and control of the change order process.
- Review the contractor's schedule on a regular basis for accuracy and compliance with promised milestones, and advise the contractor, designer and the Town regarding any concerns with the progress of construction.
- Work with Town inspectors to facilitate their visits and review of the construction site.
- Monitor the architect's involvement and performance on construction-related issues.
- Working with the architect, review payment requisitions from the contractor for accuracy and make recommendations as to payment so as to ensure prompt processing of applications for payment.
- Review invoices from the architect and report on accuracy and scope of services to the Town.
- Monitor quality of construction at all times, using any pre-established quality control procedures.
- Ensure that appropriate "as-built" drawings are being created and maintained, and that the contractor is properly recording and retaining all required manuals, samples, cut sheets, etc., related to the quality and nature of the construction in progress on the job site.
- In general, facilitate communication and problem-solving among all construction team members. Promote a collaborative rather than adversarial relationship among all parties.
- Prepare a written, monthly report to the Town, summarizing the progress of design and construction of the project, highlighting important events and identifying pending issues that must be addressed.
- Attend meetings of the Building Committee, Board of Selectmen and all other Town boards and committees, as necessary or requested by the Town, during the course of the project.
- Attend meetings with the architect, the contractor, subcontractors and any other persons participating in the project, as necessary or requested by the Town.
- Maintain a complete project file, including, but not limited to, correspondence, daily and monthly reports, payment records, schedules, and files on particular issues as they arise.

Closeout Services

- Assist the architect and the Building Committee in the preparation of the final project punch lists, and facilitate their timely completion.
- In consultation with the architect, advise the Town on the timing of the approval of the Contractor's notice of final completion and final application for payment.
- Assist the Town and Police Department staff in the planning and implementation of all moving activities for equipment, supplies, furniture and furnishings.
- Review all warranty documents, as-built plans and manuals to ensure compliance with the construction contract documents.
- Ensure that all building commissioning and turnover is completed properly and all applicable Town officials, including the Town Administrator, Building Inspector, Department of Public

Works, and public safety personnel are completely informed about the requirements for operation, maintenance and repair of building systems and equipment.

- Make sure that the Town receives a complete list of all Subcontractors and Suppliers and the applicable warranties and certificates of warranty of both.

Ongoing Services

- Maintain regular contact and communication with the Building Committee, Town designated officials and the architect during the course of the project to ensure that all Town-side participants are fully and timely informed of the progress of the project, the progress and quality of the construction, and status of project expenditures as compared to the project budget.

5. SUBMISSION PACKAGE

The submitted proposal must correspond exactly to the format and required content listed in the chart below. Proposers are required to clearly tab proposals in order to increase the efficiency of the review process. Responses that do not meet the required format may be rejected outright, or may be subject to a lower rating when evaluated. Please note the suggested lengths of each section of a proposal – excessively large proposals with unnecessary extra content are discouraged.

Information about the logistics of the actual submission process is provided in Section 7 below.

Tab	Section	Topics to be Included
A	Cover letter 1 to 2 pages	<ul style="list-style-type: none"> • Overview of the proposer • Competitive advantages over other OPMs • Appointment of a key point person for the proposer during the selection process and his/her contact information
B	Previous Project Experience 1 page introduction Chart or list should be as brief as possible to cover the material. A few pictures are fine, and you may highlight 1 or 2 projects with extra text, but do not include large quantities of boilerplate material on these projects.	<ul style="list-style-type: none"> • Begin this section with a one-page text overview of your recent project history, and include mention of your on-time and on-budget record, and describe any experience with sustainable building methods and LEED certification. • Make a chart of all projects in the range of \$3M to \$20M total project cost completed in the past 10 yrs, and highlight the projects subject to G.L. c. 149, §§A-H. • Describe any experience with public safety building construction and/or renovation. • Information provided in the chart about each project should include: <ol style="list-style-type: none"> 1. Name and location 2. Client 3. Your role and responsibilities in the project 4. Building use 5. Completion date 6. Dollar value of total project (approx.) 7. Dollar value of construction (approx.) 8. New construction or renovation, or both 9. Size in GSF, indicate size of renovation vs. new

		<p>10. Public safety, police or fire station aspects if applicable</p> <p>11. Name and contact information for reference</p> <p>12. Other comments or description as relevant</p> <ul style="list-style-type: none"> • Projects outside of this size range may be mentioned if there is specific relevance to the Police Station project • If a proposer has been or is currently involved in litigation on a project, provide a narrative description of the litigation and identify all parties involved.
C	<p>References and Reputation</p> <p>1 page</p>	<ul style="list-style-type: none"> • Project references to be provided in conjunction with project experience section above. • Other references may be provided if they are relevant. • Please note any awards or other recognition awarded to you that is relevant to your OPM work.
D	<p>Project Approach</p> <p>Limit to 2 to 4 pages</p>	<ul style="list-style-type: none"> • Describe your approach to project management, and why you are different from other OPM firms. • Discuss your methods of communicating with your clients throughout a project. • Provide three examples of the depth of your OPM experience, and how this knowledge helped a client to achieve a goal or avoid a large problem. • Describe any IT or other tools used to increase effectiveness.
E	<p>Proposed Staffing</p> <p>No more than 2 pages per person.</p>	<ul style="list-style-type: none"> • Names, experience and qualifications, including professional credentials such as registration as an architect, professional engineer, or construction supervisor of all staff who would be assigned to the project (attach resumes of all individuals). • Proposed project organization, describing levels of involvement and responsibility, and contingency plans.
F	<p>Firm Stability and Capacity</p> <p>1 to 2 pages</p>	<ul style="list-style-type: none"> • Describe the history and ownership of the proposer. • List any past financial problems that were made public, such as bankruptcy filings. • Describe your work load at this time and your ability to undertake and commit to this project. • Provide evidence of general liability insurance, worker's compensation, and automobile insurance. • Provide evidence of at least \$2.0 million professional liability insurance policy currently in place.
G	<p>Required Forms</p>	<ul style="list-style-type: none"> • Certificate of Non-Collusion • Certificate of Compliance with State Tax Laws • Statement on MGL & Building Code

6. EVALUATION CRITERIA

Proposers who have met the minimum qualifications and submission requirements set forth in this RFP will be evaluated and ranked by the Police Station Building Committee based on the criteria in the chart below. All proposers will be evaluated by the same criteria. The evaluation will be set forth in writing.

The Building Committee will examine and assign ratings to each proposal section using the following categories: Highly Advantageous, Advantageous, Acceptable, or Unacceptable. Any proposal that receives an “Unacceptable” rating for any of the criteria sections may be rejected. In addition to the materials submitted within the proposal, the Town may contact the listed references and may ask for additional information or a clarification of any responses.

The ratings done by the individual Building Committee members for each proposal will be combined with the results of reference checks to determine an overall score for each proposer. These scores will then be used to determine the final ranking of the proposers and to identify the top-ranked proposers to be interviewed.

Tab A General Quality of the Response

Evaluation Criteria	Scoring Rubric			
	Highly Advantageous	Advantageous	Acceptable	Unacceptable
General Quality of Response	Met <i>and/or exceeded</i> all RFP requirements, including format, understanding of project, completeness of proposal.	Met all RFP requirements, including format, understanding of project, completeness of proposal.	Met all basic proposal requirements, some follow-up for clarification and amplification of proposal elements may be required.	Did not meet one or more response requirements.

Tab B Previous Project Experience

Evaluation Criteria	Scoring Rubric			
	Highly Advantageous	Advantageous	Acceptable	Unacceptable
Experience with projects of similar size and scope	Successful management of >5 similar projects (\$6M to \$10M) and >3 Ch. 149 public projects AND sustainable building and/or LEED experience	Successful management of >5 similar projects (\$6M to \$10M) and >3 Ch. 149 public projects	Successful management of at least 5 similar projects (\$6M to \$10M) and 3 Ch. 149 projects	Management of fewer than 5 similar projects and/or fewer than 3 Ch. 149 public projects.
Public Safety Building Construction Experience	Successful management of 5 or more Public Safety Building construction or renovation projects.	Successful management of 2 or more Public Safety Building construction or renovation projects.	Demonstration of relevant skills/ experience in managing renovation/ construction of Public Safety facilities	No experience with Public Safety Building projects

Tab C References and Reputation

Evaluation Criteria	Scoring Rubric			
	Highly Advantageous	Advantageous	Acceptable	Unacceptable
Reference checks	Outstanding recommendations from all reference checks, at least 2 of which involved construction of Public Safety facilities.	Outstanding recommendations from all reference checks.	Good or “would repeat” recommendations.	Any references which indicated caution or expressed any reservations.

Tab D Project Approach

Evaluation Criteria	Scoring Rubric			
	Highly Advantageous	Advantageous	Acceptable	Unacceptable
Project Approach	Proposer provided an excellent response with appropriate reference to all of the items in section 4 of the RFP, Scope of Services, and in section 5, Submission Package – subsection D, Project Approach	Proposer provided an excellent response and addressed most of the items in section 4 of the RFP and subsection D of section 5.	Proposer provided an adequate response that addressed most of the items in section 4 of the RFP and subsection D of section 5.	Proposer did not provide adequate responses to most of the items in section 4 of the RFP and subsection D of section 5.

Tab E Proposed Staffing

Evaluation Criteria	Scoring Rubric			
	Highly Advantageous	Advantageous	Acceptable	Unacceptable
Team Members	Highly qualified staff; project leader with outstanding personal recommendations and specifically relevant experience (Public Safety Facilities); staff back-up and additional resources available if needed.	Highly qualified staff; project leader with outstanding personal recommendations.	Qualified staff; good project leader recommendations.	Inadequate or negative information regarding proposed team members' and/or project leader's qualifications, background, or experience.

Tab F Firm Stability and Capacity

Evaluation Criteria	Scoring Rubric			
	Highly Advantageous	Advantageous	Acceptable	Unacceptable
Firm Stability and Capability	Strong demonstration of financial stability and capacity to undertake project. Demonstration of civic recognition, and overall excellent company reputation.	Strong demonstration of financial stability and capacity to undertake project.	Adequate demonstration of financial stability and capacity.	Inability to demonstrate financial stability and/or available capacity to undertake project within required timeframe.

Finalist Interview – If Invited

Evaluation Criteria	Scoring Rubric			
	Highly Advantageous	Advantageous	Acceptable	Unacceptable
Interview	Proposer clearly reviewed the process as it would unfold, described work that would be delivered, and was convincing of the depth of its expertise. Staff who would be involved was present at interview. Each team member was able to establish a comfortable dialogue with the Building Committee.	Proposer clearly reviewed the process and work product. Some of the staff who would be involved were present and established a comfortable dialogue with Building Committee.	Proposer described the process and the work product. The staff who would be involved was not present.	The proposer did not adequately describe the process or work product. Staff was not present at interview.

7. SELECTION PROCESS AND TIMELINE

Submission Logistics

- Proposals are due **by 2:00 P.M. on December 7, 2016** in hard copy form, when they will be opened and registered by the Town Administrator, in the presence of witnesses. No fax or email submissions will be considered.
- Deliver hard copies by hand or by delivery service to:

Town of Freetown
c/o Town Administrator
Freetown Town Hall
3 North Main Street
Assonet, MA 02702
- Proposals must be sealed, and the package or envelope clearly labeled with the following:
“Freetown Police Station Construction Project
Response to RFP for OPM Services”
Responder’s Name and Address
- Please make note that the Town Hall hours of operation are Monday through Thursday, 8:00 A.M. until 4:00 P.M., and Friday, 8:00 A.M. until 12:00 P.M.
- Provide one original and 5 copies of the proposal in final form, one digital copy, and one loose hard copy in case additional copies need to be made for review purposes.
- Late proposals will not be considered. Modifications must be in writing, sealed and clearly labeled as such, and submitted to the Town Administrator prior to the date and hour of the proposal deadline.
- A proposal may be withdrawn by written request prior to the deadline.
- The Town is not planning to conduct an information session prior to the proposal submission deadline.
- Questions must be submitted in writing, via email, or US Mail to the Administrator at least five (5) days in advance of the deadline for the proposal submittal. All parties who have received a copy of the RFP will be notified of any published answers to substantive questions, or other addenda to the RFP.

Selection Process

- Based on the ranking of respondents using the evaluation criteria and process explained above, the Town will attempt to interview a minimum of three proposers. The Building Committee will interview the finalist, and will rank them in accordance with the stated criteria.
- The Town requires that the person(s) who will be the principal contact(s) for the project participate in the interview.

- Following the interviews, the highest ranking firm will be contacted, and a fee negotiation period will take place between the selected firm and one or more representatives of the Town.
- If a mutually acceptable compensation agreement cannot be worked out between the parties, the Town reserves the right to terminate negotiations with the highest ranked proposer, and begin discussions with the next highest ranked proposer.
- The Freetown Board of Selectmen is the awarding authority for this project. The Building Committee has been assigned the task of reviewing proposals and making recommendations based on its evaluation of qualified proposals.

Proposed Timeline

Proposal submission deadline:	2:00 P.M. on Wednesday, December 7, 2016
Proposals reviewed/finalists notified:	December 14, 2016
Finalist interviews:	January 2017
Award of OPM contract:	Date to be determined

8. OTHER INFORMATION

- No member of the Building Committee or the Board of Selectmen, or the Town Administrator may have any financial or other connections to the proper being considered for the project.
- The Town of Freetown reserves the right to reject any or all proposals or any parts thereof or to solicit new proposals and to award contracts as it deems in the best interest of the Town.
- The Town reserves the right to waive informalities in a proposal and to award a contract in the best interest of the Town.
- The Town will require a Certificate of Non-Collusion, a Tax Compliance Certification, a Certificate of Authority, and a Statement on MGL Building Code from the selected proposer. **The Certificate of Non-Collusion must be submitted with the proposal.** (Examples attached.)
- The successful proposer will be required to sign the contract presented by the Town, which shall be substantially in the form attached hereto.
- Information contained in the RFP and successful proposer's proposal, as determined by the Town, shall be incorporated into and become part of the contract.
- To the fullest extent permitted by law, the successful proposer will defend, indemnify, and hold harmless the Town from and against any and all liability, loss, damages, costs or expenses for bodily injury or damage to real or tangible personal property which the Town may sustain, incur or be required to pay, arising out of or in connection with the performance of the contract by reason of any negligent action/inaction or willful misconduct by the OPM, its agents, servants or employees.
- All proposals must be unconditional and shall be deemed to be public records and will become the property of the Town of Freetown. If a proposer believes that its proposal contains proprietary or trade secret information that proposer is not willing to make public, such

information may be submitted in a separate envelope clearly marked “Confidential”, and, to the extent permitted by law, such information will be treated as confidential.

- The Town of Freetown shall not be liable for any costs incurred by proposers in preparing, submitting or presenting proposals, or in satisfying and demonstrating compliance with the requirements of this RFP.
- The selected firm or individual shall comply with all applicable state and federal laws in the performance of services
- The selection of the successful firm or individual shall be made without regard to race, color, sex, age, religion, political affiliation, or national origin. Women and minority owned businesses are encouraged to apply.
- Purchases of goods and services by the Town of Freetown are exempt from the payment of federal and Massachusetts state taxes to the extent provided by law.

END OF RFP. REQUIRED FORMS AND SAMPLE STANDARD CONTRACT FOLLOW.

9. REQUIRED FORMS Page 1

CERTIFICATE OF NON-COLLUSION

The undersigned hereby certifies, on behalf of the name proposer, under penalties of perjury, that this proposal has been made and submitted in good faith and without collusion or fraud with any other person, and that the proposer has not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the contract. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals. Furthermore, the undersigned certifies under the penalties of perjury that throughout the duration of any contract made in connection with the proposal, it will not have any financial relation with any materials manufacturer, distributor or vendor. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the Securities and Exchange Commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation.

Signed

Date

Name and Title

NAME OF PROPOSER: _____

9. REQUIRED FORMS Page 2

Tax Certification

Pursuant to M.G.L. Chapter 62C, Sec. 49A, the undersigned, acting on behalf of the Contractor, certifies under the penalties of perjury that the Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support*.

**Signature of Individual

***Contractor's Social Security Number
Or Corporate Contractor Federal Identification
Number

By: _____
Corporate Officer (Mandatory, if applicable)

Date: _____

NAME OF CONTRACTOR: _____

9. REQUIRED FORMS Page 3

STATEMENT ON MGL AND BUILDING CODE

I certify, on behalf of the Proposer named below, that all information provided to the Town of Freetown in response to the Town's RFP for Owner's Project Manager services for the Town's Police Station Project is submitted under penalties of perjury and that I am familiar with the State Building Code and also Massachusetts General Laws, Chapter 149, Sections 44A-44H and Section 44M, Chapter 193 of the Acts of 2004, and General Laws Chapter 30, Section 39M.

Signed

Date

Name and Title

Name of Proposer

AGREEMENT FOR PROJECT MANAGEMENT SERVICES

Freetown Police Station Project

The following provisions shall constitute an Agreement between the Town of Freetown acting by and through its Board of Selectmen, hereinafter referred to as “Awarding Authority”, with an address of Town Hall, 3 North Main Street, Assonet, MA 02702 and _____, with a usual place of business located at _____, hereinafter referred to as “Project Manager”, effective as of the ____ day of _____, 2016. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

1.1. Generally.

1.1.1. The Project Manager will perform all project management services in connection with the management of design and construction of the Project as set forth in Attachment A. The scope of the Project Management Services described in this Agreement is, in the reasonable opinion of the Project Manager, expected to cover all necessary services of the Project Manager for the Project. Therefore, the Project Manager shall perform all necessary services related to the Project through completion and, absent a material change in scope, the Project Manager shall provide all necessary services at no additional cost to the Awarding Authority, unless such service is requested by the Awarding Authority in writing as an additional service or such service is specifically performed after the completion date of _____, and such additional or post-completion service was not made necessary by an act or omission of the Project Manager as determined by a court of competent jurisdiction.

1.1.2. In providing the Project Management Services, the Project Manager shall endeavor to maintain an effective working relationship with the Designer (as hereinafter defined) general contractors and subcontractors (collectively, the “Contractors”) and other consultants performing services on any aspect of the Project.

1.1.3. The Project Manager shall be the Awarding Authority’s advisor in providing the Project Management Services. The Project Manager and the Awarding Authority shall perform as stated in this Agreement and the Project Manager accepts the relationship of trust and confidence established between

it and the Awarding Authority by this Agreement.

1.1.4. The Project Manager recognizes and understands that this Project will be constructed adjacent to and within existing facilities that will continue to provide services throughout the life of this Project and understands that the Awarding Authority places special emphasis on this fact. The Project Manager agrees to provide the Project Management Services in a manner that is compatible with the Awarding Authority's special needs, taking into consideration that certain limitations will be imposed on the Contractors during construction, and that the Project Management Services must allow for implementation by the Contractors in a manner that will minimize any disruption of or interference with the operation of such facilities.

ARTICLE 2: AWARDING AUTHORITY REPOSIBILITIES:

2.1. The persons from time to time designated by the Awarding Authority as the Awarding Authority's representative, shall be reasonably acquainted with the Project, shall have the authority to request services under this Agreement and shall render decisions reasonably promptly and furnish information reasonably expeditiously so as to avoid undue delay in the Project Manager's services on the Project. Unless otherwise provided by the Awarding Authority, the _____ Committee (or official) is hereby designated as the Awarding Authority's representative for this Project.

2.2. The Awarding Authority will retain an architectural design firm (the "Designer") to design and to prepare contract documents for the Project.

ARTICLE 3: TIME OF PERFORMANCE

3.1. The Project Manager shall perform all Project Management Services in a prompt and expeditious manner, consistent with, and to further, the interests of the Awarding Authority. If the Project Manager performs any services for the Project after _____, such services shall be deemed additional services, and the Project Manager shall be entitled to be paid for such additional services in accordance with Paragraph 4.3 below.

3.2. If the work of the Project is delayed by an act beyond the Project Manager's control, including an act of the Awarding Authority, Designer or Contractors or their employees or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or by delay

authorized by the Owner, then the Project Manager may request a change to the Time of Performance or the Compensation.

ARTICLE 4: COMPENSATION:

4.1. In consideration of the performance of the Agreement, the Awarding Authority shall pay to the Project Manager a fixed fee of \$ _____, payable in equal monthly installments commencing on _____ until _____.

4.2. The fixed fee in Section 4.1. includes all reasonable reimbursable and out-of-pocket costs of the Project Manager with respect to the Project, all of which costs are included in the fixed fee and shall not be otherwise chargeable to or reimbursable by the Awarding Authority.

4.3. If additional services, not required under the Agreement, are requested in writing by the Awarding Authority, or if the Project Manager performs any services for the Project after _____, unless such services were made necessary by an act or omission of the Project Manager, the Awarding Authority shall pay the Project Manager at a rate agreed to by the parties. Such rate shall include all salary, benefits, overhead and profit and all expected reimbursable expenses. The Awarding Authority reserves the right to request that the Project Manager provide a lump sum fee for any additional services and if such lump sum fee is agreed upon by the parties, the agreed upon lump sum fee shall be the fee for that particular additional service.

4.4. The Project Manager shall provide the Awarding Authority with an estimate of expected costs for any requested additional services prior to undertaking such work.

4.5. Records of reimbursable expenses pertaining to additional services and other cost information with respect to additional services shall be provided to the Awarding Authority or the Awarding Authority's authorized representatives upon request.

4.6. The Project Manager shall submit monthly to the Awarding Authority a statement for its services rendered in the prior month in accordance with the compensation described in Article 4.

4.7. Payment by the Awarding Authority to the Project Manager of the approved statement amount shall be made within thirty (30) days after it is submitted.

ARTICLE 5: AGREEMENT DOCUMENTS

5.1. The following documents form the Agreement and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Awarding Authority shall govern. In the event that the above documents prescribe for the same work in different quantities or quality, the Project Manager shall provide the greater quantity or higher quality.

ARTICLE 6: AGREEMENT TERMINATION:

6.1. The Awarding Authority may suspend or terminate this Agreement by providing the Project Manager with ten (10) days written notice for any of the following reasons:

1. Failure of the Project Manager, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the material provisions of this Agreement by the Project Manager.
3. A determination by the Awarding Authority that the Project Manager has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

In addition, the Awarding Authority may terminate this agreement without cause upon thirty (30) days written notice to the Project Manager.

6.2. If the Awarding Authority fails to make payment to the Project Manager of sums due and owing as provided in Article 4, then after thirty (30) days written notice to the Awarding Authority, provided the Awarding Authority has not cured such non-performance within such thirty (30) day period, the Project Manager may terminate this Agreement.

6.3. If the Awarding Authority fails to perform any of its obligations (other than as provided in Section 6.2.), then after thirty (30) days written notice to the Awarding Authority, provided the Awarding

Authority has not cured such non-performance within such thirty (30) day period, the Project Manager may terminate this Agreement.

6.4. In the event of such termination, the Project Manager shall be compensated for all services properly rendered prior to the date of termination.

ARTICLE 7: INDEMNIFICATION:

7.1. The Project Manager shall defend, indemnify and hold harmless the Awarding Authority, its officers, agents and employees, from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the Project Manager's performance of services under this Agreement, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

7.2. In claims against any person or entity indemnified under paragraph 7.1. by an employee of the Project Manager, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under paragraph 7.1. shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Project Manager under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

7.3. The Project Manager shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax laws applicable to it with respect to its duties and obligations under the Agreement. The within language shall not be construed as a limitation of the Project Manager's liability under this Agreement or under any applicable law.

ARTICLE 8: AVAILABILITY OF FUNDS:

8.1. The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 9: PERFORMANCE STANDARD – COMPLIANCE WITH LAW:

9.1. The Project Manager will provide all Project Management Services in a manner (i) that is expeditious and economical based on established compensation provisions in this Agreement, (ii) that it is consistent with service standards for comparable projects by qualified owner's project managers, and (iii)

demonstrating an understanding of the established schedule, budget and other Awarding Authority objectives for the Project and each component thereof.

9.2. The Project Manager represents that all Project Management Services will be performed in accordance with all applicable Federal, State, and local laws, ordinances, by-laws, codes, and regulations and in accordance with sound project management practice.

9.3. The Project Manager agrees that, in performing the Project Management Services under this Agreement, it shall comply with all of the terms of all governmental approvals in connection with all aspects of the Project.

ARTICLE 10: ASSIGNMENT:

10.1. The Project Manager shall not make any assignment of this Agreement without the prior written approval of the Awarding Authority.

ARTICLE 11: AMENDMENTS:

11.1. All Amendments or any changes to the provisions specified in this Agreement can only occur when mutually agreed upon by the Awarding Authority and Project Manager. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Awarding Authority and Project Manager. Additionally, all amendments and changes shall be approved by the Awarding Authority's Town Accountant prior to execution by the Awarding Authority. No amendment or change to the Agreement provisions shall be made until after the written execution of the amendment or change to the Agreement by both parties.

ARTICLE 12: INSURANCE:

12.1. The Project Manager shall obtain and maintain throughout the duration of the Project the following insurance limits and coverage:

- Commercial General and Automobile Liability Insurance shall be written for not less than the limits of liability as follows:
 - \$4,000,000 General Aggregate Limit
 - \$4,000,000 Products-Completed Operations Aggregate Limit

- \$2,000,000 Personal Injury and Property Damage Limit
- Business Automobile Liability: \$2,000,000 Each Accident – Single Limit.
- Excess Umbrella Liability: Minimum of \$5,000,000.
- Professional Liability: Minimum of \$2,000,000.
- Workers' Compensation Insurance: The Project Manager shall, at its own expense, obtain and maintain Workers' Compensation Insurance as required by law.

12.2. The Project Manager's Commercial General Liability Insurance shall include premises – operations (including explosion, collapse and underground coverage) independent contractors and completed operations, all including broad form property damage coverage.

12.3. Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

12.4. The Awarding Authority shall be named as an additional insured party on the Project Manager's insurance policies for the Project.

12.5. The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, modified or not renewed until at least thirty (30) days prior written notice has been given to the Awarding Authority. Certificates of Insurance showing such coverage to be in force shall be filed with the Awarding Authority prior to the execution of this Agreement, and upon the renewal of any such coverage during the term of this Agreement. Certificates shall indicate effective dates and dates of expiration of policies. All insurance policies required hereunder shall be written by companies satisfactory to the Awarding Authority and licensed to do business in the Commonwealth of Massachusetts and shall be in form satisfactory to the Awarding Authority.

12.6. The Awarding Authority shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under this Agreement.

ARTICLE 13: DOCUMENTS AND DELIVERABLES:

13.1. All documents, plans, drawings, reports and data prepared for and delivered to the Awarding Authority by the Project Manager under this Agreement including, without limitation, all daily reports, RFI's, proposed change orders, and change directives, shall become the property of the Awarding

Authority. Any re-use of such materials for a project other than the project specified herein without the Project Manager's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Project Manager or to the Project Manager's independent professional associates, sub-Project Managers or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the Project named herein shall not be construed as an act in derogation of the Project Manager's rights under this Agreement.

ARTICLE 14: NOTICE:

14.1. All notices required to be given hereunder shall be in writing and delivered, or mailed first class, to the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

ARTICLE 15: DISPUTE RESOLUTION

15.1. All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be subject to review by any court having appropriate jurisdiction, unless the parties agree in a separate writing to some other form of dispute resolution.

ARTICLE 16: STAFFING:

16.1. It is understood that the unique abilities of the Project Manager have been a substantial inducement for the Awarding Authority to enter into this Agreement. Therefore, the Project Manager will perform the work itself and will not assign or subcontract the work to third parties without the prior written consent of the Awarding Authority. The Awarding Authority shall have the right of approval of Project Management staff assigned to the Project in accordance with Section 16.2.

16.2. The Project Manager hereby agrees and acknowledges that one of the conditions of this Agreement is that the individuals in charge of the direction and supervision of the Project on behalf of the Project Manager shall be named and approved by the Awarding Authority at least one month prior to the commencement of construction work on the Project, and such individuals and the members of the Project Manager's project team set forth below (the "Project Manager's Project Team") shall be available to attend meetings and respond to requests, comments, questions and concerns of the Awarding Authority

and other parties identified by the Awarding Authority. This condition is a substantive inducement to the Awarding Authority without which the Awarding Authority would not have entered into this Agreement with the Project Manager. Notwithstanding the foregoing, the Project Manager shall submit to the Awarding Authority as soon as possible information on the credentials of the proposed project manager and assistant project manager. In consideration of the foregoing, the Project Manager agrees that for so long as any such member of the Project Manager's Project Team is employed by (or, as appropriate, a principal of) the Project Manager, such member(s) shall direct, shall be responsible for, and shall be available to provide the Project Management Services in connection with the Project. If at any time any such member of the Project Manager's Project Team is no longer available as aforesaid, then his replacement shall be subject to the prior approval of the Awarding Authority. The Project Manager's Project Team will consist of the persons noted below and necessary assistants and other technical and administrative personnel. All of the Project Manager's Project Team shall be experienced in projects similar in size, scope and complexity to the Project. Each member of the Project Team shall be appropriately licensed and certified and qualified by training and experience in their respective fields. No change will be made in the composition of the Project Team without the Awarding Authority's approval. No personnel in the Project Team designated as full-time on the Project shall assume additional responsibilities outside of the Project without the written consent of the Awarding Authority. The Awarding Authority may require replacement of any member of the Project Manager's Project Team upon notice to the Project Manager with or without cause. The members of the Project Manager's Project Team are as follows:

16.3. The Project Manager shall provide the Awarding Authority with a schedule listing the names, job descriptions and professional biographical information for all other staff expected to work in the Project. The Project Manager shall provide emergency contact information to the Awarding Authority for all members of the Project Team.

16.4. The Project Manager acknowledges and agrees that the designated on-site project manager shall be at the Project Site at least _____ days a week for a total of _____ hours.

16.5. The Project Manager will at all times remain an independent contractor and is not an agent of, employee of, or a joint venture with, the Awarding Authority.

16.6. Except as provided in the immediately following sentence, the Project Manager will not have the authority to enter into agreements on the Awarding Authority's behalf or otherwise bind the Awarding Authority by its decisions and the Project Manager will not hold itself out as the Awarding Authority's agent. The Project Manager shall act in the capacity of an agent or representative of the Awarding Authority only to the extent expressly authorized by the terms of this Agreement or as the Awarding Authority may from time to time otherwise expressly authorize the Project Manager in writing.

ARTICLE 17: CERTIFICATIONS:

17.1. The Project Manager certifies that:

1. The wage rates and other costs used to support the Project Manager's compensation are accurate, complete and current at the time of contracting.
2. The original Agreement price and any additions to the Agreement may be adjusted within one year of completion of the Agreement to exclude any significant amounts due to inaccurate, incomplete or non-concurrent wage rates or other costs.
3. It has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.
4. No consultant to or sub-Project Manager for the Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or sub-Project Manager of a contract by the Project Manager.
5. No person, corporation or other entity, other than a bona fide full time employee of the Project Manager, has been retained or hired by the Project Manager to solicit for or in any way assist the Project Manager in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Project Manager.
6. It has internal accounting controls as required by M.G.L. c.30, §39R and that the Project Manager filed and will continue to file an audited financial statement as required by M.G.L. c.30, §39R(d).

ARTICLE 18: MISCELLANEOUS

18.1. This Agreement will be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of laws principles.

18.2. If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall, to the extent possible, be enforceable without such provisions.

18.3. This Agreement represents the entire and integrated agreement between the Awarding Authority and the Project Manager and supersedes all prior negotiations, representations or agreements, either written or oral.

18.4. This Agreement shall be binding upon and inure to the benefit of the Awarding Authority and its successors and assigns. This Agreement shall be binding upon and inure to the benefit of the Project Manager and its permitted successors and permitted assigns. The Project Manager may not assign any right or delegate any obligation hereunder without the Awarding Authority's prior written approval.

18.5. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

18.6. No employee or official of the Awarding Authority shall assume any personal liability pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

PROJECT MANAGER

AWARDING AUTHORITY

TOWN OF FREETOWN

By: _____
Signature

By its Board of Selectmen

Print Name

Print Name

Approved to as to form:

Town Counsel